

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida
Wednesday, 9:35 a.m.
June 14, 2000

PHASE II-B

TRIAL - VOLUME 544

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
On behalf of Plaintiffs

WINSTON & STRAWN
DAN WEBB, ESQ.
BRADLEY LERMAN, ESQ.
On behalf of Defendant Philip Morris

DECHERT PRICE & RHOADS
WILLIAM DODDS, ESQ.
On behalf of Defendant Philip Morris

COLL DAVIDSON SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris

ZACK KOSNITZKY
STEPHEN N. ZACK, ESQ.
On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER
R. BENJAMINE REID, ESQ.
DOUGLAS J. CHUMBLEY, ESQ.
On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE
JAMES JOHNSON, ESQ.
JAMES YOUNG, ESQ.
DIANE G. PULLEY, ESQ.
On behalf of Defendant R.J. Reynolds

KING & SPALDING
GORDON SMITH, ESQ.
On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

APPEARANCES (Continued)

SHOOK HARDY & BACON
KENNETH J. REILLY, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant The Tobacco Institute.
and Tobacco Institute

ADORNO & ZEDER
ANTHONY UPSHAW, ESQ.
On behalf of Defendant Brown & Williamson

DEBEVOISE & PLIMPTON
JOSEPH P. MOODHE, ESQ.
On behalf of Defendant Council for Tobacco Research

1

I N D E X

2

WITNESS

PAGE

3

MICHAEL SZYMANCZYK

4 Continued Cross by Mr. Rosenblatt 54041

5

6

E X H I B I T S

7

PLAINTIFFS'

OFFERED ADMITTED FOR ID

8 EXHIBITS

PAGE

PAGE

PAGE

9 1-L 54068

10 1-M 54089

11 54 54055

12 55 54070

13 56 54074

14 57 54078

15 58 54083

16 59 54083

17

18

E X H I B I T S

19

DEFENDANTS'

OFFERED ADMITTED FOR ID

20 EXHIBITS

PAGE

PAGE

PAGE

21

22

23

24

25

1 (Whereupon, the following proceedings were had:)

2 THE COURT: Good morning, all.

3 Do we have anything to take up before we get
4 a jury out?

5 MR. ROSENBLATT: No, Your Honor.

6 THE COURT: Nothing, surprise.

7 All right, let's get the jury out.

8 Oh, I do have that motion from somebody,

9 Mr. Webb's motion on Dr. Burns' depo. We have to hear
10 that before when?

11 MR. WEBB: Maybe the end of the day today.

12 THE COURT: When is the depo scheduled?

13 MR. MARKS: Scheduled for Friday.

14 THE COURT: We should take care of that today
15 or tomorrow.

16 MR. MARKS: Today preferably, because people
17 will be traveling.

18 THE BAILIFF: Bringing in the jury. Jurors
19 entering the courtroom.

20 (The jurors entered the courtroom.)

21 THE COURT: All right, have a seat, folks.

22 Okay, we were in the middle of cross examination.

23 You may proceed.

24 I guess I have to ask the jury, Anybody see
25 anything, hear anything, read anything, get exposed to

1 anything about this case over the night from any
2 source, whatsoever?

3 THE JURY PANEL: No, sir.

4 THE COURT: Everybody has got an open mind,
5 still? Didn't reach any decision about anything?

6 Yes, you have? No, you haven't?

7 THE JURY PANEL: We haven't.

8 THE COURT: All right. You may proceed.

9 MR. ROSENBLATT: Good morning, ladies and
10 gentlemen.

11 THE JURY PANEL: Good morning.

12 CROSS-EXAMINATION

13 BY MR. ROSENBLATT:

14 Q. Good morning, Mr. Szymanczyk.

15 Are you getting used to Miami?

16 A. Yes, a little bit, yes.

17 Q. I'm going to show you now the very first

18 exhibit that was introduced in the punitive damage

19 phase of the case. But before I do that, are you

20 familiar with the law firm of Hunton & Williams?

21 A. I'm familiar with the name, yes.

22 Q. Do they -- it's obvious from the letter I'm

23 going to show you that they do or they have represented

24 Philip Morris Companies, Inc., the parent company.

25 Have they also represented, has the law firm of Hunton

1 & Williams also represented Philip Morris, Inc.?

2 A. I believe that's correct.

3 Q. And the writer of this letter, who's a member
4 of the firm of Hunton & Williams, is a lawyer named
5 Jerry Whitson. Do you know him?

6 A. I know who he is.

7 Q. Okay.

8 THE COURT: Is that an exhibit?

9 MR. ROSENBLATT: Yes, it's in evidence.

10 THE COURT: With a number?

11 MR. ROSENBLATT: Exhibit 1.

12 BY MR. ROSENBLATT:

13 Q. Okay, this is a letter dated February 10,
14 2000 from Mr. Whitson, of the law firm of Hunton &
15 Williams, to the chief counsel of the Securities and
16 Exchange Commission.

17 And as you can see in the very first few
18 words, he's obviously writing the letter on behalf of
19 Philip Morris Companies, Inc., your parent.

20 Now, we go down a little, about the fourth
21 line in the letter, he's talking about, Report to
22 Shareholders, the details of how the company intends to
23 address the issue that its cigarette products cause
24 illness among humans and how it intends to correct the
25 defects in the products that cause such sickness.

1 He's referring to a proposal that was
2 submitted by a Mr. Connolly, who he calls the proponent.

3 Now, let me go down to the bottom paragraph
4 on Page 1.

5 This is where I want you to focus, about four
6 lines from the bottom.

7 THE COURT: Can you read that from here or do
8 you need a small copy?

9 BY MR. ROSENBLATT:

10 Q. Four lines from the bottom he says:
11 "Mr. Neuhauser's letter mischaracterizes the company's
12 Web site as constituting a public admission that
13 cigarettes cause illness."

14 Do you agree that your company's Web site
15 does not constitute a public admission that cigarettes
16 cause illness?

17 A. Yes, I would agree with that. That's not the
18 purpose of the Web site. The purpose of the Web site
19 is to convey the information known by the public health
20 authorities and to direct consumers and potential
21 consumers to understand and listen to that information.

22 Q. Okay. So you see no inconsistency between
23 the statement on your Web site, which acknowledges that
24 there is out there a universal medical and scientific
25 consensus that cigarette smoking causes lung cancer and

1 other diseases, there's no inconsistency between saying
2 that and saying, on the other hand, that Philip Morris
3 does not admit that cigarettes cause illness?

4 A. Well, the Web site is intended for one
5 purpose. And I think I've described that purpose. And
6 I think I've also described that, yes, Philip Morris
7 believes that smoking causes illness, as I described in
8 my direct examination. So, no, I don't see an
9 inconsistency at all. I mean, one is intended for a
10 specific purpose, the other is a statement of the facts
11 as we understand them.

12 Q. This lawyer is saying very clearly to the
13 Securities and Exchange Commission that: Our Web site
14 does not constitute a public admission that cigarettes
15 cause illness. And you agree with that?

16 MR. WEBB: Your Honor, object, this was asked
17 and answered. He just answered it.

18 THE COURT: It is a little repetitious.

19 BY MR. ROSENBLATT:

20 Q. Well, let me hand you the letter, because
21 there's a second page, Exhibit 1. And does Mr. Whitson
22 say anything in that letter about it's not a public
23 admission, depending upon your definition, or if you
24 use the statistical definition, or does he say anything
25 about finding the mechanism, or does he simply say --

1 does he in any way dilute the statement, on the second
2 page of this letter, that your Web site does not
3 constitute a public admission that cigarettes cause
4 illness?

5 A. Well, let me read it.

6 Okay, what's your question again now?

7 Q. Whether there's anything on the second page
8 of the letter which in any way dilutes his statement or
9 in any way refers to locating the mechanism of
10 causation or talks about a statistical or
11 epidemiological definition of causation, is there
12 anything --

13 A. No, this is a letter -- this isn't a
14 litigation-based letter; this is a letter to the
15 Securities and Exchange Commission --

16 Q. I know what this is. I'm simply asking --

17 MR. WEBB: Can he answer the question?

18 THE COURT: Counsel is right. He interrupted
19 the witness while he was answering a question.

20 A. This is simply responding, I believe, to a
21 shareholder proposal. And you have to sometimes engage
22 the Securities and Exchange Commission relative to what
23 the appropriate procedures and policies are, to include
24 or exclude a shareholder proposal in the public
25 documents for the company. So I mean, that was the

1 purpose of the document.

2 I wouldn't have expected it would go into
3 that kind of a discussion. That wasn't the intent of
4 the document.

5 Q. Yes. Obviously, the shareholder proposal
6 said that Philip Morris' Web site constitutes a public
7 admission that cigarettes cause illness, and the
8 purpose of this letter is to say, no, it doesn't,
9 correct?

10 A. Well, I don't know exactly what the
11 shareholder proposal said. I'd have to look at the
12 shareholder proposal. But this letter, I think, is
13 correct in saying that the purpose of the Web site is
14 to convey information to the consumer regarding what
15 the public health authorities say about smoking and
16 health.

17 Q. You know, from the standpoint of the -- we've
18 had the chart with the parent company, Philip Morris
19 Companies, and then Kraft Foods and Miller beer and
20 your company, but here we have, in terms of the
21 relationship between the parent, Philip Morris
22 Companies, and your company, the company that you're
23 the CEO of, here we have a letter being written on
24 behalf of Philip Morris Companies, and the only subject
25 being addressed is your Web site, correct?

1 A. Well, the subject that's being addressed is a
2 shareholder proposal. The shares that are available in
3 the marketplace are Philip Morris Companies,
4 Incorporated, shares.

5 I have no shares, I'm not a publicly-traded
6 company. So that's a proposal, just like there are
7 other shareholder interactions relative to other
8 operating companies of Philip Morris Companies, Inc.,
9 so it would have to be that way. But that particular
10 issue that's raised in that letter regarding Philip
11 Morris Companies' stock and stock transactions is
12 relative to my company.

13 Q. Have you ever discussed with Mr. Bible, the
14 number one Philip Morris guy in the world, who is the
15 CEO of Philip Morris Companies, the parent company,
16 have you ever discussed with him that if this jury were
17 to return a substantial punitive damage award, whether
18 Philip Morris Companies would loan Philip Morris, Inc.,
19 some money to cover them?

20 MR. WEBB: Your Honor, objection.

21 THE COURT: Let's go sidebar.

22 (The following proceedings were had at
23 sidebar:)

24 MR. WEBB: Your Honor, there was a motion in
25 limine which I think was implied. Unless we're going

1 to go forward and pierce the corporate veil and lay a
2 foundation to do so, you cannot even suggest to this
3 company that Philip Morris' assets or values should be
4 used to pay a punitive damage award. What he did was
5 highly inappropriate.

6 THE COURT: Let's stop that last statement
7 you made. My understanding is it's not being used to
8 pay for it, that is, the assets of the company is not
9 being used to pay the award. The question was whether
10 they would loan money to Inc., USA, with which to pay.
11 And that's far different than having the parent pay.
12 So I think we have to make a distinction there.

13 MR. WEBB: Judge, under the law, it's very
14 clear that there's no distinction there. That question
15 is --

16 THE COURT: You show me where in the law it
17 says that.

18 MR. WEBB: I will, Your Honor.

19 THE COURT: It doesn't say you can't loan
20 money.

21 MR. WEBB: The implication is that the assets
22 of Philip Morris would loan money to Inc. to pay off a
23 punitive damage award so we can pay a greater amount of
24 money because we can borrow money from a parent company
25 as opposed to a bank.

1 THE COURT: Whatever the award could be
2 covered by a loan from either A, the parent, or loan
3 from B, the bank.

4 Now, the question basically is: Who's got
5 the money with which to give it to him? The parent or
6 the bank?

7 I understand your position, okay. But we
8 have to get our terms straight. There was a discussion
9 as to whether or not the parent could loan the money.

10 MR. WEBB: Your Honor, that's the very thing
11 that piercing the corporate veil goes to.

12 Mr. Rosenblatt's question is that we maybe could pay
13 more money than our assets allow us to pay because we
14 could borrow money from a sister company.

15 THE COURT: Let's assume it's not a sister
16 company. Let's assume that you're going to go out to a
17 bank and borrow the money, is there a difference
18 between the two?

19 MR. WEBB: The answer is yes, because if you
20 have to go to a bank, in an arm's length transaction,
21 to borrow money, you're going to be limited on
22 borrowing money based on collateral and what assets you
23 have. The implication here is that we can get more
24 money --

25 THE COURT: Suppose somebody said, "Okay,

1 let's do an arm's length loan," and you're going to
2 operate as a bank would operate, would there be any
3 prohibition to doing it that way?

4 MR. WEBB: It's a proper question to ask
5 whether Philip Morris Companies can go out and borrow
6 money to pay a punitive damage award into the
7 marketplace, he can ask that question if he wants to.

8 THE COURT: The next question is, from whom
9 and under what circumstances?

10 MR. WEBB: That's correct, but what he can't
11 do is imply because it's Philip Morris Companies --

12 THE COURT: I agree that he can't imply that
13 there would be more money available because it's the
14 main company, but it's a tight line, because, let's
15 face it, if you're talking about an arm's length deal,
16 just like you would a bank, only you change the name
17 from Bank A to Company A, then there really shouldn't
18 be any difference between the two if the terms are the
19 same.

20 In other words, you borrow on the basis of
21 the assets of their net worth and you have a payout at
22 a certain interest rate. I don't see where there's any
23 difference with that.

24 MR. WEBB: The difference is the Philip
25 Morris Companies -- the only reason Mr. Rosenblatt is

1 asking the question is to imply, because of all the
2 assets owned by Philip Morris Companies, that there
3 will be more available.

4 THE COURT: I would agree with you under
5 those circumstances that he could have a different deal
6 with the companies than he could with the bank. But if
7 the deal is the same, then I don't see the difference.

8 MR. WEBB: That's why I objected to the
9 question, because he asked, had he ever talked to
10 Mr. Bible?

11 THE COURT: But we haven't gotten there. We
12 haven't reached Stage II.

13 Where are you going? If he says yes --

14 MR. ROSENBLATT: What did you discuss?

15 THE COURT: And he says: Well, we discussed
16 how much money we can borrow from the company.

17 MR. ROSENBLATT: How much?

18 THE COURT: Then it gets into a real problem.

19 MR. ROSENBLATT: I don't think there's been a
20 discussion.

21 THE COURT: But you don't know the answer.

22 MR. ROSENBLATT: I don't know the answer. It
23 wasn't asked on the depo.

24 MR. WEBB: That's the whole point, is to
25 leave the implication --

1 MR. ROSENBLATT: But he said yesterday a
2 statement which couldn't possibly be true, and that is,
3 Philip Morris, Inc. could not borrow money from any
4 bank in America. He made that statement, which is an
5 absurd statement.

6 MR. WEBB: You certainly can cross examine
7 him on statements he made.

8 THE COURT: Well, he may be looking at it
9 from a financial banking viewpoint as to whether or not
10 it would be a good risk; but, I mean, that's a
11 different story.

12 I simply don't know the answer to this
13 question, and I don't want to really get into that area
14 because I think we are getting way beyond this issue.

15 MR. ROSENBLATT: The concept of borrowing is
16 basic, concept of borrowing. I simply want to
17 demonstrate that there are other, Philip Morris Capital
18 Corporation, there are other avenues where you can go
19 to borrow money. Have you tried?

20 THE COURT: Now we're getting into totally
21 different questions.

22 MR. WEBB: My question goes to this
23 particular question about talking to Jeff Bible about
24 borrowing money from the parent company, which I object
25 to.

1 THE COURT: I don't know if there's a
2 prohibition about that. I mean, it's not even piercing
3 the veil.

4 MR. WEBB: Your Honor, it's implying that
5 Philip Morris Companies should loan them money in order
6 so they have more money to pay a punitive damage award.

7 That's what the jury is not supposed to look
8 at, is to look at greater assets in another company
9 that's not the defendant in this case.

10 THE COURT: The implication is there.

11 MR. WEBB: It is, clearly is.

12 THE COURT: All right. I'll sustain the
13 objection.

14 (The sidebar conference was concluded, and
15 the following proceedings were held in open court:)

16 BY MR. ROSENBLATT:

17 Q. We were discussing a bunch of magazines
18 yesterday. I'm going to only show you one additional
19 magazine, the June 12th People Magazine.

20 And this is the cover.

21 MR. WEBB: What's the exhibit number?

22 MR. ROSENBLATT: Doesn't have an exhibit
23 number, because I'm going to offer it in after I ask my
24 questions.

25 BY MR. ROSENBLATT:

1 Q. Now, you've got an ad in here for Cambridge.
2 We haven't talked very much about Cambridge. And what
3 is this? This is a coupon, right, in the magazine,
4 itself?

5 A. That's what this is, a buy-one, get-one-free
6 coupon, yes.

7 Q. So in other words, someone takes this coupon,
8 they take two packs of Cambridge, but only have to pay
9 for one if they present this coupon?

10 A. That's correct.

11 (The ad is displayed to the jury.)

12 BY MR. ROSENBLATT:

13 Q. And just to demonstrate the consistency of
14 the advertising campaign of Philip Morris in this June
15 12th People, you've got a two-page ad for a new
16 menthol, Marlboro Milds. And that's a different kind
17 of format for Marlboro than the usual kind, correct?

18 A. Well, as I told you yesterday, that's a new
19 product introduction.

20 Q. And then on the inside back cover, again,
21 you've got Virginia Slims, Never Let the Goody Two
22 Shoes Get You Down. And this -- what's today? June
23 14th. So this is the current People Magazine.

24 MR. ROSENBLATT: I want to offer this in
25 evidence as plaintiffs' next exhibit.

1 THE CLERK: 54.

2 THE COURT: Any objection, counsel?

3 MR. WEBB: No.

4 THE COURT: No objection, be admitted.

5 THE CLERK: 54.

6 THE COURT: 54.

7 (Plaintiffs' Exhibit 54 was admitted into
8 evidence.)

9 BY MR. ROSENBLATT:

10 Q. Mr. Szymanczyk, last year, 1999, as the CEO
11 of Philip Morris, Inc., you received a bonus of
12 \$1,368,000; is that correct?

13 A. No, I don't think that's correct.

14 Q. Let me show you, from Philip Morris
15 Companies, Inc., where it lists salaries and bonuses
16 for the top executives. I'm looking at the Summary
17 Compensation Table, Page 13, Michael E. Szymanczyk,
18 President and Chief Executive Officer Philip Morris,
19 Inc., and unless I'm reading this incorrectly, it shows
20 that in 1999 your bonus was \$1,368,000. This is where
21 I'm at. You know, look through it.

22 A. So, um -- there's two -- you want me to show
23 you here. That's the bonus I received was \$850,000. I
24 have not received this bonus. This is a bonus that
25 requires me to remain with the company for a period of

1 time before I'll be eligible to receive it.

2 So it's assigned, but it isn't paid. So I've
3 not received it at this point in time. Of this number,
4 I've received \$850,000 at this point. And it was
5 actually paid to me in February.

6 Q. So as I understand it, you actually receive
7 cash in hand, as a bonus, of \$850,000?

8 A. That's correct.

9 Q. But you've been promised a half a million
10 dollars more if you remain with the company for how
11 long?

12 A. That requires a period of a year.

13 Q. A year from the time of the bonus?

14 A. Yes. A year from the time it was assigned.

15 Q. Well, that's a sure thing. You're not going
16 anywhere. I mean, you're not quitting?

17 A. Maybe not.

18 Q. You may get fired, but you're not quitting.

19 With those kind of bonuses, you're not quitting.

20 A. That's not true. You don't know that.

21 Q. I agree. No one knows the future.

22 But as you're sitting in that chair today,
23 you fully expect to be with Philip Morris a year from
24 today. And if you are, you'll receive the additional
25 half million bonus?

1 A. Well, no, I'm not going to commit to that.
2 I'm not going to commit to something that I don't know.
3 I don't have plans to leave Philip Morris at this point
4 in time, but I won't commit that a year from now I'll
5 be here. I can't tell you that.

6 Q. So your bonus that you actually received in
7 '99 was 850,000, correct?

8 A. That's correct.

9 Q. Plus your salary of how much?

10 A. Eight-ten.

11 Q. 810,000 salary, \$850,000 bonus. And if
12 you're with the company a year from now, you get
13 another half million dollars, plus, of course, your
14 bonus for the year 2000?

15 A. If I'm given a bonus, that would be correct,
16 yes.

17 Q. Ever since you've become CEO, your salary has
18 only gone in one direction, up. And your bonus has
19 only gone in one direction, up?

20 A. That's correct.

21 Q. In spite of all these financial obligations
22 under the Master Settlement Agreement, correct?

23 A. My salary and bonus have gone up.

24 Q. You would agree, Mr. Szymanczyk, that you
25 have a direct financial interest in what this jury

1 ultimately decides to award as punishment damages
2 against your company?

3 A. Relative to --

4 Q. Relative to your stock options, relative to
5 your future with the company, you've got a direct
6 financial interest?

7 A. Um, it's possible that that would be true,
8 yeah. If the verdict of the jury has a direct impact
9 on the stock price, it could certainly have an impact.

10 Actually, the litigation in this particular
11 case has already had a substantial impact on my
12 compensation, because the primary part of my
13 compensation is stock, as is the case with any CEO of a
14 Fortune 500 company.

15 And I've lost a substantial amount of money,
16 even though I get paid at a rate which to me is more
17 than I ever imagined I would make. I started my career
18 making 800 bucks a month.

19 So I feel very fortunate. But that's the
20 going rate for a CEO of a company the size that I run.
21 But I think that that's a true statement. All of this
22 litigation certainly has an impact on the stock price,
23 and the stock price is a very large component of a
24 CEO's compensation.

25 Q. Well, you said something a moment ago that

1 this case, this case, this case, not litigation in
2 general, but this class action has already had a
3 substantial impact on the stock price?

4 A. I think that's right.

5 Q. And every tobacco analyst who looks at this
6 agrees that the two verdicts in this class action have
7 impacted the stock price of Philip Morris Companies?

8 A. I think that's correct.

9 Q. Because, according to the March 10, 2000
10 proxy statement, at Page 19, you have beneficial
11 ownership of about 600,000 shares of common stock; is
12 that correct?

13 A. No. That's not correct.

14 Q. And again, I guess I'm not used to reading
15 these things, but it says, Page 19: Ownership of
16 equity securities.

17 It has your name. And then it says: Amount
18 in nature of beneficial ownership.

19 And it says 595,265.

20 I rounded it off.

21 A. Well, there's some other forms in here that
22 show what this is. But in terms of actual ownership
23 stock that I control, I have 4900 shares. The company
24 has assigned to me approximately 135,000 shares of
25 what's called restricted stock, most of which I have to

1 be with the company when I'm age 60 before they revert
2 to become mine.

3 So that's about another nine years. Then the
4 rest of this would be options, stock options, in other
5 words, the right to buy stock at a specific price.

6 Of those options, I actually have, at this
7 point, a little over a million shares. And there's two
8 classifications of those. One of them is what's called
9 vested stock, which means that it's available to me if
10 I were to leave the company, those options would be
11 available to me to cash in. Those options are worth
12 something in the range of about \$200,000.

13 And that's what I mean when I say the equity
14 part of my compensation is not -- has not been very
15 much.

16 The rest of the stock is not vested. In
17 other words, if I left the company, I would not be able
18 to take those options. I'm required to be there for
19 varying lengths of time, depending on the option, in
20 order to ever be able to utilize that option. That's
21 how stock works.

22 So, I mean, these are summary numbers for a
23 given point in time. I've given you what the accurate,
24 up-to-date numbers would be and how they're
25 categorized.

1 Did you want this back?

2 Q. Yes. Thanks.

3 And isn't it also true that the board of
4 directors was so impressed with Mr. Bible's work in
5 negotiating the Master Settlement Agreement, that he
6 was compensated --

7 MR. WEBB: Your Honor, I object to his -- I
8 object to this.

9 THE COURT: Talking about Companies, Inc.?

10 MR. WEBB: Yes.

11 THE COURT: Sustained.

12 BY MR. ROSENBLATT:

13 Q. You fully expect the same pattern to
14 continue, in terms of your salary and bonus, that in
15 the year 2000 you're going to make more in salary, more
16 in bonus than you made in the year 1999?

17 A. Well, I don't know that. But my compensation
18 is really tied directly to the mission of the company.
19 So my job is to accomplish the mission. I've laid out
20 the mission, and to the degree the board of directors
21 judge that we're making good progress relative to that
22 mission, I would expect that I'll be compensated
23 accordingly.

24 But I don't have any guarantees of that.

25 That's a year-to-year determination of the board of

1 directors.

2 Q. You became CEO in '97?

3 A. At the end of '97.

4 Q. End of '97. And, as we've discussed, the
5 trend has always been upward in terms of salary and
6 bonus?

7 A. Mr. Rosenblatt, for the 29 years I've been
8 employed, my compensation trend, on an annual basis,
9 has been upward. So there's no deviation in this
10 situation from what has been the historical pattern
11 that I've been able to earn.

12 Q. Well, Mr. Szymanczyk, when you were working
13 for Proctor & Gamble, you weren't making any \$1
14 million-plus bonuses, were you? You were getting
15 bonuses, but you weren't getting them in this range,
16 were you?

17 A. Well, I was certainly at a different level --

18 Q. You were at different level?

19 A. -- in my career at that point.

20 Q. I'm going to show you a chart that Mr. Webb
21 showed to the jury during opening statement. And I'm
22 pretty sure he showed it to you during your testimony.

23 That chart is very misleading, isn't it?

24 A. In what way?

25 Q. In what way? Because it doesn't say anything

1 about promotion. If the chart said: "What is Philip
2 Morris' advertising and promotion commitment?" this
3 would be about a billion dollars, not 67 million?

4 A. It's not a comparison of advertising and
5 promotion, it's a comparison of media advertising. And
6 you're correct, price discounts on the product, that
7 would be a substantially different number, because it's
8 really pricing on the product.

9 Q. It would be night and day if we included
10 promotion?

11 A. That's a wholly different thing.

12 Q. Okay. And you know that when you talk about
13 both advertising and promotion, and you talk about the
14 tobacco industry as a whole, not just Philip Morris,
15 you're talking about five, \$6 billion a year is spent
16 by the tobacco industry on both advertising and
17 promotion?

18 A. Well, I don't know if that's the correct
19 number. But it's a very competitive industry, and
20 because of that, because of the fact that there are
21 substantial differences between price tiers today,
22 because there are substantial differences in cost
23 structures between companies, there is a lot of price
24 promotion activity in the marketplace, as companies
25 that are higher priced, like we are, and, frankly, many

1 of the defendants in this room are, trying to compete
2 with lower price products in the market.

3 Q. Well, that's also, you know, a method of
4 inducement to get the smoker to pick your product
5 rather than someone else's product, because on a given
6 day they can have a coupon, or it's cheaper?

7 A. Well, generally, price promotion is really
8 more of a way to keep your consumer from leaving you
9 and moving to a different product.

10 Q. Do you recall, during your tenure with Philip
11 Morris, during your employment with Philip Morris, that
12 at one point you wanted to develop a retail masters'
13 hit list and plans as to how to get these accounts
14 sold. Does that ring a bell to you?

15 A. It's possible. I don't remember that
16 specifically.

17 Q. Look at what I have yellowed there.

18 A. Correct, okay.

19 Q. The questions that I began asking you when I
20 started questioning you yesterday, that from the
21 standpoint of a salesman, from the standpoint of
22 someone in sales and marketing, the more the better;
23 that's what you want to do, you want to sell as much of
24 your product as you possibly can, and that's your
25 directive to your people there, that's what the hit

1 list refers to?

2 A. Well, retail masters is not a product; retail
3 masters is a display program for stores. And, in fact,
4 the way the retail program works is it's the way that
5 we encourage retailers today to move their product into
6 a non-self-service environment and encourage them to
7 contain their signage to the display case. And so we
8 want to get as many accounts on that program as we
9 possibly can.

10 And at this point in time, this was back in
11 1993, we had launched this program as a means to get
12 our product merchandise in a way that left less clutter
13 in the store, and it was a more focused way for our
14 product to be displayed.

15 So I understand your point. This is not --
16 there's nothing in here about selling volume. This is
17 all about selling a merchandising program to clean up
18 stores.

19 Q. Yeah, with the ultimate objective so that the
20 retailer will sell as much of the Philip Morris
21 cigarettes as possible?

22 A. Well, the objective of the program is to have
23 our product properly displayed, and the objective of
24 the sales force is to build share of market on our
25 product. And yes, that would be correct, those would

1 be things that we're trying to get accomplished.

2 Q. Okay. I mean, this is your company, this is
3 a memorandum from you to distribution, meaning who?

4 A. Well, I don't know, there's a distribution
5 list.

6 Q. Are these Philip Morris employees on the
7 distribution list?

8 A. Yes.

9 Q. Okay. And this is the paragraph that I was
10 referring to where you say: "Develop a retail masters'
11 hit list and plans to get these accounts sold. Each
12 trademarking director should develop a target list of
13 the accounts we don't have, we'd like to have, as well
14 as a plan to make the sale. This may require some sort
15 of a bonus payment, ala, the growth fund. So we'll
16 need to work closely with legal on this one. We should
17 focus on convenience chains with this effort and
18 identify inefficiencies in our carton outlet program to
19 develop funding."

20 Basically what you're saying here is: We
21 want as many retailers, including chain stores, to
22 carry our products.

23 A. No, I'm saying, we want as many stores as
24 possible on this program, which is a good thing.

25 Q. But you want them on the program to sell your

1 product?

2 A. Well, I want them on my program to sell the
3 products. But I have a whole range related to this
4 program that are good things for the category.

5 In fact, the program today -- today it's
6 called Retail Leaders -- is a program that focuses on
7 helping retailers convert their merchandising to a
8 non-self-service environment, which many want to do,
9 and it helps them merchandise the product without
10 counter displays on the counter. It helps them make
11 sure they have We Card signage in their stores, or some
12 other approach to having carding signage in their
13 stores. And it helps them try to contain their signage
14 to the category in the store so there aren't cigarette
15 signs all over the store.

16 It's a good thing to have the highest
17 percentage of the accounts representing our volume as
18 we can on our program.

19 MR. ROSENBLATT: I would offer this memo of
20 September 1, 1993, in evidence.

21 MR. WEBB: Your Honor, we can take that under
22 advisement. I don't know if I have any objection or
23 not. I haven't looked -- I haven't seen it. Can we
24 reserve it so I can look at it later?

25 THE COURT: All right. Mark it for

1 identification.

2 THE CLERK: That's 1-L.

3 (Plaintiffs' Exhibit 1-L was marked for
4 identification.)

5 BY MR. ROSENBLATT:

6 Q. Now I'm going to show you a letter which you
7 wrote to retailers --

8 MR. WEBB: Is this marked with an exhibit
9 number?

10 MR. ROSENBLATT: No.

11 MR. WEBB: Can I see the exhibit?

12 THE COURT: Yes. Let's come sidebar with the
13 other one, too. Maybe we can kill two birds with one
14 stone.

15 (The following proceedings were had at
16 sidebar:)

17 THE COURT: Do you have any more of these
18 things?

19 MR. ROSENBLATT: No, not on this issue.

20 MR. WEBB: Your Honor, I object to this
21 letter. This is a letter dated back in 1992, eight
22 years ago, which is totally irrelevant to the issues in
23 this case or anything that he testified to on direct
24 examination.

25 I did not cover at all on direct examination

1 anything about Marlboros, or anything about tobacco
2 cigarette sales programs at all. I mean, so the idea
3 or the concept that back in 1992 that Mr. Szymanczyk is
4 writing a letter, apparently to retail outlets, about
5 how the addition of tobacco products to their product
6 line can increase their sales, is completely irrelevant
7 to any issue.

8 I can't imagine what issue in this case it's
9 relevant to or anything that has to do with his direct
10 examination.

11 So it's clearly outside the scope of direct,
12 and it's completely irrelevant to anything in this
13 case.

14 MR. ROSENBLATT: It has to do with the issue
15 of change. Nothing has changed. He still would expect
16 Philip Morris employees, in his position back then, to
17 be doing this kind of thing. Nothing has changed.

18 THE COURT: Promoting sales?

19 MR. ROSENBLATT: Exactly.

20 MR. WEBB: Your Honor, he did not testify on
21 direct examination anything about whether anything has
22 changed as far as how we do our sales activity. He
23 didn't say anything at all about it.

24 THE COURT: Yes. And he's trying to find out
25 if they are.

1 Okay, overruled.

2 (The sidebar conference was concluded, and
3 the following proceedings were held in open court:)

4 THE COURT: You can mark it in evidence over
5 objection.

6 (Plaintiffs' Exhibit 1-L for identification
7 was admitted into evidence as Plaintiffs' Exhibit
8 No. 55.)

9 BY MR. ROSENBLATT:

10 Q. Why don't you just glance at this before I
11 put it up on the Elmo.

12 MR. ROSENBLATT: I just wanted to give the
13 witness a second to review that before I put it up on
14 the screen.

15 A. Okay.

16 Q. This is a letter by you. At that point in
17 time, March 6, 1992, you were the senior vice-president
18 of sales. And who are you referring to, "Dear
19 Partner," the retailers?

20 A. That letter was written -- I think if you go
21 to the top, it says: PM Trade Direct, Album Cover and
22 Inside Letter.

23 I don't know exactly what that refers to, but
24 it's a communication to customers. This could be very
25 likely to wholesalers. Okay.

1 Q. Okay. So what is yellowed there --

2 A. It must be to wholesalers, because if it's
3 Trade Direct, it has to be to wholesalers, because
4 that's who buys directly from us.

5 Q. In the last sentence in the first paragraph,
6 which is yellowed, you say, "But we also provide a
7 product with a tremendous opportunity for additional
8 profit, tobacco. You may not realize all that
9 cigarettes can do to increase your sales."

10 And then you go on to say: "That can add up
11 to enormous profits."

12 I mean, in the business world and in
13 marketing and sales, that's the bottom line, the top
14 line and the middle line: Increase profits, increase
15 sales. That's the objective, always, isn't it?

16 A. That would be the objective of these
17 individual businesses. But that doesn't change the
18 fact, Mr. Rosenblatt, that each one of these customers
19 is competing for share of market in a declining
20 business just like I am.

21 And so each of them competes against the
22 other wholesalers in the marketplace for increased
23 share of the marketplace. Plus, they're always looking
24 for ways to get share of various categories.

25 So, I don't know specifically to what trade

1 segment this was referring. It sounds to me like it
2 refers to the food business. And in the food business,
3 tobacco is one category that has been losing share of
4 market to some other categories.

5 So, this may have been a letter to help them
6 have a better understanding of looking at the cigarette
7 business as a means for them to get incremental share,
8 or incremental profit through getting incremental share
9 of the marketplace.

10 I think it's consistent with what I've said
11 all along in that this is a declining business, it
12 declines. All you can do, and what everybody does, is
13 compete for share of the marketplace. Whether you're a
14 manufacturer or wholesaler or a retailer, you're
15 competing for a piece of a declining pie.

16 Q. And therefore, the objective is the highest
17 possible market share?

18 A. You're competing to try to grow your market
19 share at the expense of somebody else.

20 MR. ROSENBLATT: Does anyone know what
21 happened to the pointer?

22 That's all right.

23 Q. "You may not realize all that cigarettes can
24 do to increase your sales."

25 In that sentence, were you saying to increase

1 your cigarette sales or were you saying to increase
2 your sales generally, of other products?

3 A. Well, I think what that is referring to is
4 increasing the overall sales in a wholesaler's business
5 or in a retail store, if that was talking about a
6 retail store. It's talking about on a per-square-foot
7 basis, the store has so many square feet in it,
8 cigarettes are a small item so they don't take up a lot
9 of square footage. But if you can build share market
10 in cigarettes, then it will add to your profit in your
11 store overall.

12 Q. What you say down here is: "Every few weeks
13 you'll receive helpful ideas and materials to build
14 your business, including advice on how to sell more
15 tobacco products."

16 Right?

17 A. That's correct. That would be consistent
18 with what I said.

19 Q. And even though -- now you're the CEO of the
20 company -- but the earlier letter, the earlier memo and
21 this letter, you would expect your present senior
22 vice-president of sales and marketing to be following
23 your lead in this regard?

24 A. Well, our objective is to build our share of
25 the marketplace, we would continue to be doing that,

1 yes.

2 MR. ROSENBLATT: Offer this in evidence, this
3 letter of March 6, 1992, that was just on the Elmo.

4 MR. WEBB: I think it was already received.

5 THE COURT: No. I hadn't put it in yet.

6 MR. WEBB: No objection.

7 THE CLERK: Plaintiffs' 56 in evidence.

8 (Plaintiffs' Exhibit 56 was admitted into
9 evidence.)

10 BY MR. ROSENBLATT:

11 Q. Marlboro cigarettes are the number one
12 consumer packaged good in the world, correct?

13 A. I don't know if that's true or not.

14 Q. Well, you say it?

15 A. Based on what measure?

16 Q. You tell me.

17 A. Well, I don't know.

18 Q. This is: Welcome to Philip Morris USA.

19 This is a recruiting brochure where you go on
20 college campuses --

21 A. It may be in unit sales. That's probably
22 what it refers to.

23 Q. What it says is: Marlboro cigarettes, the
24 number one consumer packaged good in the world?

25 A. That's probably based on unit sales.

1 Q. Okay. You would agree that Philip Morris USA
2 is a marketing powerhouse?

3 A. I think that the company is a very good
4 marketing company, yes.

5 Q. Now, Mr. Szymanczyk, it is true, isn't it,
6 that Philip Morris regularly communicates with 26
7 million plus Americans on your smokers list by sending
8 coupons, two-for-one deals, pamphlets, booklets and
9 other advertising and promotional materials?

10 A. We communicate with segments of that
11 database -- depends on the brand -- on a regular basis,
12 yes.

13 Q. How often do you communicate with the 26
14 million?

15 A. I don't know.

16 Q. Several times a year?

17 A. Well, depends on what brand it is, in other
18 words, we don't just send out mass mailings to 26
19 million people, except on occasion for special
20 purposes. So it just depends on what brand it is and
21 what segment of the database is involved.

22 Q. So, in other words, you've got the 26 million
23 people subdivided, who are the Marlboro smokers, who
24 are the Virginia Slims smokers, who are the Cambridge
25 smokers, that kind of thing?

1 A. That's correct. Even have competitive
2 smokers, I mean, that's part of what you have a
3 database for.

4 Q. And I'm going to show you a cardboard
5 ensemble for Marlboro: Party at the Marlboro Ranch.

6 I'm sure you're very familiar with this, but
7 look it over.

8 A. Okay.

9 Q. What you've got in your hand now, "Here's
10 your chance to party out west," it appears to be a
11 sweepstakes for a free trip to a party at a Marlboro
12 ranch?

13 A. That's correct.

14 Q. And is this the type of promotion that would
15 regularly be sent out to Marlboro smokers on your 26
16 million list?

17 A. Well, it wouldn't be -- I don't know that you
18 could say this is regularly sent out. This promotion
19 is sent out once in the year, this particular kind of a
20 promotion.

21 This is a -- what we've done to develop what
22 I would call adult relationship marketing programs, in
23 an effort to make sure that we're communicating and
24 marketing specifically to adults.

25 This goes to somebody who is certified on the

1 database. Then if they enter and they win, they have
2 to be 21 or above. And to become involved in this,
3 they are actually carded personally. I mean, you
4 cannot participate in this program unless you prove
5 that, without a shadow of a doubt, that you are of age,
6 and that you certify you are a smoker.

7 So, that's what this is. It's an adult
8 marketing program, handled through direct mail.

9 Q. And you say: Give it to a friend.

10 A. You can give it to a friend, but you've got
11 to be 21 to be able to participate in this.

12 Q. And if the friend fills out a card, then --
13 and if the friend is over 21 and can prove it, then the
14 friend is added to your database list?

15 A. That would be correct.

16 MR. ROSENBLATT: We'd offer this as an
17 exhibit.

18 MR. WEBB: I have no objection.

19 THE COURT: Next exhibit.

20 THE CLERK: Plaintiffs' 57.

21 THE COURT: Is that a two-item exhibit,
22 counsel?

23 MR. ROSENBLATT: My understanding is it's all
24 part of the same thing. But it's two separate items.

25 THE WITNESS: I think it's all part of the

1 same thing.

2 THE COURT: The little packet goes in there.

3 THE CLERK: Then it's only 57.

4 (Plaintiffs' Exhibit 57 was admitted into
5 evidence.)

6 BY MR. ROSENBLATT:

7 Q. I'm going to -- You remember, we were
8 discussing yesterday the Master Settlement Agreement,
9 where I made the point that in that agreement you deny
10 that you had done anything wrong, and you were just
11 settling the case for business reasons. And you said
12 that was a boilerplate provision.

13 A. I believe it is, yes.

14 Q. But whether it's boilerplate or not
15 boilerplate, it's something you wanted in there?

16 A. Well, they may have wanted it in there, too.
17 So, I mean, it was in there.

18 Q. Well, the State of Florida Settlement
19 Agreement -- you had a separate agreement, you said,
20 with four states: Florida, Mississippi, Minnesota and
21 Texas?

22 A. That's correct.

23 Q. So this is the -- that's the no-admission
24 provision from the State of Florida Settlement
25 Agreement, which simply says --

1 MR. WEBB: Your Honor, could I just object?

2 This was covered yesterday. I just object on the
3 grounds of repetition. This was covered yesterday
4 afternoon with a series of questions.

5 MR. ROSENBLATT: My purpose --

6 THE COURT: Well, I guess we'll have to talk
7 about it then.

8 (The following proceedings were had at
9 sidebar:)

10 MR. WEBB: Your Honor, my objection goes to
11 you can't just repeat cross examination one day, then
12 come back the next day and decide to go back in the
13 same line of cross. He covered this very identical
14 thing yesterday. Now, he didn't show the actual line.

15 THE COURT: That's what I thought.

16 MR. WEBB: But you can't then go back and
17 say: Let me show you the exact language.

18 THE COURT: Let's see if the area is somewhat
19 different.

20 MR. ROSENBLATT: I'm simply trying to
21 correct, there was a deficiency yesterday. I wasn't
22 organized where I had these yesterday, and I want to
23 put them in evidence.

24 MR. WEBB: I have no objection. These are in
25 evidence now. I've got the -- I marked the entire

1 settlement agreement, which this is a part of, which
2 obviously I'm offering into evidence. So this is in
3 evidence. So he's not showing the jury anything --

4 MR. ROSENBLATT: One is the State of Florida,
5 this is from the Master Settlement Agreement, but it's
6 a similar provision. And for continuity, I would
7 simply like to read the provisions and then offer them
8 in evidence.

9 MR. WEBB: Your Honor, I'm going to object.
10 You don't offer pieces of paper in evidence. The
11 agreement comes into evidence. That's a paragraph.

12 THE COURT: Unless the agreement doesn't come
13 into evidence. I don't know if there's an objection to
14 the entire agreement.

15 MR. WEBB: Well, I object to this coming into
16 evidence if they're not offering the agreement in. If
17 they're going to object to offering the agreement into
18 evidence --

19 THE COURT: I don't know, I don't know what
20 his position is on that. He didn't offer it.

21 MR. ROSENBLATT: We would object to the whole
22 agreement coming in.

23 MR. WEBB: Judge, if they're going to object
24 to the agreement coming in, he can't publish a
25 paragraph like this.

1 THE COURT: I don't know why not.

2 MR. WEBB: If the document is not in
3 evidence, you can't publish a paragraph out of it. I
4 don't know what rule of evidence would allow --

5 MR. ROSENBLATT: Don't you remember the whole
6 argument about the magazines couldn't come in evidence?
7 You just wanted pages. Now this is a total reversal.

8 THE COURT: There are certain parts of a
9 document that we don't need. But if there's part of a
10 document that is material or relevant, then that
11 particular one can be introduced, for the purposes of
12 proof in evidence in this case, on the basis of
13 materiality and relevancy.

14 Now, you're saying that the entire agreement
15 is material and relevant, I assume, that's why you want
16 to put it in. Right now I don't know whether it should
17 be used.

18 You folks made reference to it ad nauseam. I
19 don't really have any problem with him taking these two
20 pages out and saying: This is what we talked about
21 yesterday; is that correct?

22 MR. WEBB: But he covered it yesterday.

23 THE COURT: Yes, but he's not getting into
24 the substance.

25 MR. ROSENBLATT: I'm just reading it, and I'm

1 going to drop it.

2 THE COURT: If you're going to ask him: Are
3 these the two paragraphs --

4 MR. ROSENBLATT: Then I won't even read it.

5 THE COURT: -- and he says "Yes," then you
6 can offer them in evidence.

7 MR. ROSENBLATT: Fine.

8 (The sidebar conference was concluded, and
9 the following proceedings were held in open court:)
10 BY MR. ROSENBLATT:

11 Q. Let me show you the provision, the paragraph,
12 the no-admission-of-wrongdoing paragraph in the
13 settlement agreement with the State of Florida. And
14 then I'll show you the no-determination-or-
15 admission-of-wrongdoing in the Master Settlement
16 Agreement.

17 And all I'm asking you at this point is
18 whether those paragraphs were included in your
19 agreement with the State of Florida, and then your
20 agreement with the Master Settlement, the rest of the
21 attorney generals?

22 A. Well, I don't know if these specific ones
23 were. I'd have to look at my copy of the Master
24 Settlement Agreement. But there is a no-admission
25 boilerplate in the list of boilerplate legalese in the

1 Master Settlement Agreement, this may be it, but I
2 can't stipulate that it is. I can't remember it that
3 well.

4 MR. ROSENBLATT: There's no issue about this.

5 MR. WEBB: I don't think there's any problem.

6 THE WITNESS: That's fine. I don't know.

7 THE COURT: It's taken out of its normal
8 form.

9 MR. WEBB: Mr. Rosenblatt has taken it out.
10 I'm sure he Xeroxed it correctly.

11 THE WITNESS: I'm sure it is. I'm not saying
12 that it's not. I just can't remember.

13 THE COURT: We'll check it -- you can mark it
14 at this point individually.

15 THE CLERK: Into evidence?

16 THE COURT: Yes.

17 THE CLERK: 58 and 59.

18 MR. JOHNSON: Your Honor, shouldn't it be
19 just marked for identification until we're able to
20 verify it?

21 THE COURT: No, I'm going to mark it in
22 evidence. We can always withdraw it if we need to.

23 (Plaintiffs' Exhibits 58 and 59 were admitted
24 into evidence.)

25 BY MR. ROSENBLATT:

1 Q. You told the jury yesterday that smoking was
2 going down among teenagers?

3 A. In the last three surveys I've seen, the
4 trend line from 1997 to 1999 shows a reduction.

5 Q. Aren't you aware that the federal Centers for
6 Disease Control and Prevention issued a report just a
7 few days ago, on June 8th, that said the opposite, that
8 teenage smoking is on the rise?

9 A. Well, the statistics in the report say
10 exactly what I just said. The headline says, for the
11 '90s, for the decade, it was on the rise. But it shows
12 that from 1997 through 1999, it's declined, which is
13 the same information that's shown in the Michigan
14 Monitoring Study. And it's also the same information
15 that's shown in the Pride Study.

16 So my comment earlier in my testimony, and I
17 was specific, relates to 1997 through 1999, which is
18 consistent with that report.

19 Q. Do you agree that frequent cigarette use
20 amongst teenagers has gradually climbed from 12.7
21 percent in 1991 to 16.8 percent in 1999?

22 A. Would you like me to look at it?

23 Q. Well, look at this -- you have --

24 I'll give that to you.

25 A. I won't agree with what's in the newspaper.

1 If you've got the report, I'll look at the report.

2 Q. The newspaper doesn't have enough status,
3 you'd like to look at the report?

4 A. I'd like to see the data, because I didn't
5 read it in the newspaper, I looked at the actual
6 report.

7 Q. Well, that's kind of unique for you, with you
8 looking at actual reports, because you discussed
9 yesterday these millions of pages that are on the
10 Minnesota Depository, available on the Internet, that
11 people can hook into. But you've never once availed
12 yourself of that, have you?

13 A. Well, I look at a lot of information that's
14 current information. You're talking about historical
15 information. And I explained that yesterday. I look
16 at a lot of current information, and I look at some
17 historical information relative to what the public
18 health community says about youth smoking. And I refer
19 to that information as a part of making decisions about
20 youth smoking.

21 So that's a recent document and, of course, I
22 looked at that document. I'm interested, as I told
23 you, in measuring what's happening relative to youth
24 smoking prevention.

25 Q. Okay. I'll show you the document in a

1 moment. But have you ever availed yourself of the
2 opportunity to look at the millions of pages on the
3 Minnesota Depository?

4 A. No, I have not.

5 Q. Never have.

6 A. So what is it that you want me to do?

7 Q. I thought you were going to locate something
8 that would tell us that teenage smoking has been on the
9 decline from 1997 to 1999. And I had asked you the
10 question that, it went up from about 12 percent to
11 16-something from '91 to '99?

12 A. There is a summary chart. What it does is it
13 shows the by-year trends. At least that's what I
14 looked at. And you would be correct, that the trend
15 increased from 1990 or '91.

16 I can't remember where it started. I think
17 it was '90, up to 1997. But then I believe in 1997 it
18 began a decline.

19 It is possible, Mr. Rosenblatt, that the 1999
20 number is higher than the 1990 number, but it's lower
21 than the 1997 number. In other words, the decline
22 started in 1997, and that was my point.

23 I would have to spend some time with this to
24 dig it out of this. What I had was a summary report of
25 this that they issued.

1 Q. Let me show you something that might be a
2 little more handy, on youth risk behavior trends, from
3 the Centers for Disease Control. Let me show you a
4 table, the title of which is: Risk Behaviors that
5 Worsened Between 1991 and 1999. And when it says,
6 "frequent tobacco use," even from 1997 to 1999, it went
7 up, not by much, but it went up?

8 A. Well, there's more to this sheet than that.
9 That's one of the ratings. There's another rating, as
10 I recall, in this which does show the decline.

11 And as I said, there's also a Michigan
12 Monitor Study, which is the largest study. And there's
13 the Pride Study that is done. And they corroborate
14 what is in this. So there's more data than what you're
15 giving me here. But you are correct, that particular
16 measure had a one-tenth increase between 1997 and 1999.
17 In other words, it was flat.

18 Q. That particular measure --

19 A. That particular measure was -- there was
20 another measure relative to tobacco use that was the, I
21 think the number of kids who have smoked. This is, the
22 measure you've given me here, is "frequent cigarette
23 use," not what percentage of the kids in that age group
24 actually smoked. And I believe that number went down.

25 Q. Those are the figures from the Centers for

1 Disease Control?

2 A. This is, yes, Youth Risk Behavior Study,
3 which covers a range of different things, from wearing
4 their seatbelts, to sexual behaviors, to drug use and
5 alcohol abuse and so on.

6 Q. And of course, the Centers for Disease
7 Control and Prevention is part of the United States
8 Department of Health and Human Services. And in terms
9 of the table that I showed you, "Tobacco use, frequent
10 cigarette use" it was at 12.7 in 1991, went up to 13.8
11 in 1993, 16.1 in 1995, 16.7 in 1997 and 16.8 in 1999,
12 correct?

13 A. That's correct.

14 Q. Okay. Let me -- I'd like to put that page on
15 the Elmo.

16 This is the page that we just went over.
17 "Risk Behaviors that Worsened in the time frame '91 to
18 '99." And we were focusing in on this period between
19 '97 and '99, where it went up, didn't go down; it went
20 up a little, correct?

21 A. That's correct.

22 MR. ROSENBLATT: I'd like to offer this page
23 in evidence, Your Honor.

24 MR. WEBB: As long as it's part of the whole
25 report, I don't have any objection. I object to just

1 taking the table out of the report, I object to it.

2 THE COURT: Well, reference was made in other
3 sections, unless you're talking about this report.

4 MR. ROSENBLATT: That may be fine with me,
5 Your Honor. I'd have to look at that. So let me have
6 the table marked for identification.

7 THE COURT: Is that part of this report?

8 THE WITNESS: No, that's a summary of -- see,
9 this has all kinds of tables, but there's more to that
10 summary, there are additional areas that are
11 summarized.

12 THE COURT: All right. Mark that for
13 identification.

14 Mark the other one for identification.

15 MR. WEBB: He just said that's only part of
16 the summary of it.

17 THE COURT: That's what I said. It's marked
18 for identification. And we'll check it out with the
19 other reports we haven't seen.

20 THE CLERK: 1-M for I.D.

21 (Plaintiffs' Exhibit 1-M was marked for
22 identification.)

23 THE WITNESS: Did you want this back?

24 THE COURT: Lay it there.

25 MR. ROSENBLATT: Let me get it. Thanks.

1 THE COURT: Is this a good break time?

2 MR. ROSENBLATT: Fine, Judge.

3 THE COURT: Okay, let's take a break.

4 (The jurors exited the courtroom.)

5 (A brief recess was taken.)

6 THE COURT: All right. Let's get the jury
7 out, please.

8 THE BAILIFF: Bringing in the jury. Jurors
9 entering the courtroom.

10 THE COURT: All right, have a seat, folks.

11 You may resume.

12 BY MR. ROSENBLATT:

13 Q. Mr. Szymanczyk, what percentage of new
14 smokers begin smoking at age 16 and under?

15 A. I don't know.

16 Q. No idea?

17 A. I don't know the number.

18 Q. You know, let me ask you this: Yesterday on
19 direct examination, you were discussing with Mr. Webb
20 the mission statement and the core values, and you
21 described how you go around to plants and you talk to
22 employees and you discuss it.

23 And I assume that in that context you take --
24 if someone has a question, you permit them to ask a
25 question and you give them an answer?

1 A. That's correct.

2 Q. Did any employee ever ask you this question:

3 You know, Mr. Szymanczyk, if you succeed in this
4 wonderful goal, this laudable goal, that kids don't
5 smoke, since we know that 90 percent of new smokers
6 begin when they're underage, we're all going to be out
7 of business. So maybe you don't really want to
8 succeed.

9 Did anyone ever ask you that?

10 A. Yes.

11 Q. And what did you say?

12 A. I said if that's what happens, then that's
13 what happens, that's the right thing to do. And that's
14 what we will do.

15 Q. Because, I mean, that's the logical end
16 point. If your youth prevention programs work, and
17 Carolyn Levy does her job, and these commercials work
18 and only a tiny, not three or 6,000 kids start smoking
19 every day, but the number goes down and down, you're
20 going to put yourself out of business. And you're
21 telling us, if that happens, so be it?

22 A. That possibility exists. And that's, that's
23 the answer to that question. And I have in fact
24 answered that question on more than one occasion
25 exactly that way.

1 Q. Do you remember another famous Philip Morris
2 promise that was made in 1954, 46 years ago, where a
3 vice-president of Philip Morris said publicly that: If
4 it's ever established that our product causes harm to
5 our customers, we will go out of business?

6 MR. WEBB: Your Honor, that's -- I object to
7 the form -- I object to the question.

8 Could we be heard on this, Your Honor?

9 THE COURT: Okay.

10 (The following proceedings were had at
11 sidebar:)

12 THE COURT: Do you have the statement?

13 MR. ROSENBLATT: Yes. Talks about promises
14 here.

15 THE COURT: Yes, I know. I want to make sure
16 what the language is.

17 MR. WEBB: Your Honor, my objection goes to
18 what he's asking about is the Frank Statement, that
19 took place exactly 47 years ago, which obviously is
20 Phase I evidence, that has nothing to do with the
21 issues in this case. And my understanding is we're not
22 supposed to go back and relitigate Phase I.

23 This may have been the most prominent piece
24 of evidence litigated during Phase I. This witness has
25 already testified he came to the company in 1990. So

1 to cross examine him about something that was said 47
2 years ago is clearly irrelevant, clearly outside the
3 scope of the direct examination, and it doesn't
4 contradict anything that he said.

5 THE COURT: I think he can determine whether
6 the company's policy is different now than it was then.
7 And if somebody said, "If we reach this level, then
8 we're going to go out of business," if that policy has
9 changed, I think people are entitled to know that. I
10 don't know if this statement was made -- it's not in
11 The Frank Statement itself.

12 MR. ROSENBLATT: No, it's not part of The
13 Frank Statement.

14 MR. WEBB: What are we looking at?

15 MR. ROSENBLATT: I'll tell you exactly what
16 we're looking at. This is an address before the Seven
17 States Regional NMA Meetings in St. Simons, Georgia.

18 THE COURT: But it wasn't The Frank Statement
19 itself?

20 MR. ROSENBLATT: No, it wasn't.

21 THE COURT: You mentioned it as being the
22 statement in 1954. But you didn't identify it as
23 being --

24 MR. ROSENBLATT: I didn't call it The Frank
25 Statement.

1 THE COURT: I realize that. But I was under
2 the impression and so was he. But this is an address
3 made to this group by George Weissman, in which he said
4 in the statement: This is your -- if any one of us
5 believed that the product we are making and selling
6 were in our customer's -- we would voluntarily go out
7 of business. If that's a company policy, you can ask
8 him about that.

9 MR. WEBB: Judge, wait a minute. This
10 document isn't in evidence. This looks to me like this
11 isn't even a Philip Morris document. I've never seen
12 this document before.

13 THE COURT: Well, you weren't here in other
14 Phase I.

15 MR. ROSENBLATT: It's got a Bates number.
16 There's no question that he made the speech.

17 MR. WEBB: I'll deny that he made the speech.
18 I have no way to know whether George Weissman -- this
19 could have been prepared by Mr. Motley's office, in
20 South Carolina, for all I know. I have no idea what
21 this document is, a phony document introduced into
22 evidence.

23 THE COURT: It's not --

24 MR. WEBB: I have no idea what this document
25 is. And unless there's a foundation laid, you can't

1 pull a document out of anywhere.

2 THE COURT: He can ask him if he's ever heard
3 of that policy and if that policy that he's underlined
4 there --

5 MR. WEBB: But he can't suggest that somebody
6 said it. That's what he wants to do,

7 THE COURT: We have to go through the whole
8 shooting match we went through in Phase I. I have no
9 independent recollection that this particular document
10 was marked as a piece of evidence in Phase I. I'd have
11 to go back to the records and look it up.

12 MR. ROSENBLATT: I can't honestly -- I know
13 that it was discussed, this issue of promises. Whether
14 this document came in, I'd have to check.

15 THE COURT: You can ask him if that was ever
16 a policy, to his knowledge. And if he says "no," so be
17 it. Ask him if that's the policy today; he'll say
18 whatever he says.

19 (The sidebar conference was concluded, and
20 the following proceedings were held in open court:)

21 BY MR. ROSENBLATT:

22 Q. Mr. Szymanczyk, was it ever the policy of
23 Philip Morris that, if Philip Morris as a corporation
24 and as a manufacturer and promoter and seller of
25 cigarettes, believed that the cigarettes you were

1 making and selling were in any way harmful to your
2 customer's health, that Philip Morris would voluntarily
3 go out of business?

4 A. I don't know.

5 Q. Is that Philip Morris' policy today?

6 A. I don't believe that's our policy, no.

7 Q. Well, of course it's not your policy today,
8 because you've spent a couple of days telling us --

9 A. So it's not.

10 Q. It's not?

11 A. Yes.

12 Q. No matter how harmful it is, you're not going
13 out of business, correct, based on the harm your
14 product causes, because to you it's a legal product,
15 you've got a right to sell it?

16 A. We're in the cigarette business. And as a
17 manufacturer of cigarettes, we participate in a
18 category for what it is. But, no, it isn't our
19 intention to go out of business.

20 In fact, I've examined that alternative in
21 the course of reviewing and establishing our mission,
22 but it wasn't my determination that in fact that was
23 something for me to decide.

24 In other words, I believe that's something
25 that the federal government, on behalf of the people of

1 the United States, could make a decision on. But I
2 don't believe that that's something I could make a
3 decision on, at least relative to prohibition and
4 relative to simply the company deciding to exit the
5 business.

6 My determination is that that simply opens up
7 a void that might result in a worse situation. So from
8 my point of view, I believe that the most responsible
9 thing to do, given cigarettes are sold in this country,
10 is for us to try to do whatever we can do in the
11 context of a democracy, where adults have free choice,
12 to try to reduce harm related to our product.

13 And that's the fundamental essence of the
14 mission that I've described.

15 Q. According to your people, you've been trying
16 to reduce harm for the last half century. And on your
17 Web site, on your Web site today, the year 2000, you
18 say there is no such thing as a safe cigarette. So
19 with the best intentions of the world, in the world,
20 you've not succeeded in that goal, correct?

21 A. We haven't to the degree that I would like us
22 to succeed, but we continue -- the things that I showed
23 that we're doing, I think giving consumers more and
24 more and better information regarding smoking and
25 health is one way to reduce harm, to give them better

1 information with which to make decisions.

2 Another way is to get kids not to smoke.

3 That's another way to reduce harm.

4 Another way, if we can be successful with
5 some of the science that is emerging, to reduce some of
6 the constituencies that are known to be harmful in
7 cigarettes is another way to reduce harm.

8 So, working against all three of those areas
9 I believe will help us make progress in reducing harm
10 associated with our product.

11 Q. And if it takes another few years, and the
12 tobacco industry is selling over 400 billion cigarettes
13 every year, the American public should just be patient
14 with the tobacco companies?

15 A. Well --

16 Q. Maybe they'll come up with something
17 eventually?

18 A. Mr. Rosenblatt, if I exited the tobacco
19 business, there would still be 400 billion cigarettes
20 sold in the United States, so that's not the point.

21 Q. Are you familiar with The Frank Statement?

22 A. I've heard of it.

23 Q. In The Frank Statement, of which your company
24 was a signator, it said: We accept an interest in
25 people's health as a basic responsibility, paramount to

1 every other consideration in our business.

2 Is that a true statement today on the part of
3 Philip Morris, that the health of your customers is
4 paramount to every other consideration in your
5 business?

6 A. Well, what's paramount to me is the mission
7 that I've described. That's what's paramount to me.
8 And there are a whole range of things that I think we
9 have to do to accomplish that mission. The net result
10 of doing that I hope will be a positive effect on
11 people's health. But the thing that's paramount to me
12 is that mission.

13 Q. And that mission is to continue to sell the
14 legal, defective, unreasonably dangerous product that
15 you manufacture and promote; that's what the mission
16 is?

17 A. No. The mission is to try to find ways to
18 reduce harm caused by cigarettes and to market that
19 product in this country in a democracy where the people
20 have the right to choose to do things, like smoke, in
21 the most responsible way we can.

22 Q. Have you ever asked yourself or has any
23 employee ever asked you this very simple question:
24 Would the world be a better place or a worse place
25 without cigarettes?

1 A. I have not been asked that question.

2 Q. What's your answer? I'm asking you.

3 A. I don't know.

4 Q. You don't know?

5 A. I don't know.

6 Q. You say that you're not quarreling with the
7 public health authorities who say that 430,000, 430,000
8 Americans die every year as a result of cigarettes.
9 And you don't know whether the world would be a better
10 place if those 430,000 Americans, instead of dying,
11 continued to live?

12 MR. WEBB: Your Honor, objection,
13 argumentative, it was just asked and answered.

14 THE COURT: Sustain the objection.

15 BY MR. ROSENBLATT:

16 Q. You would agree, Mr. Szymanczyk, that the
17 tobacco analysts, the financial analysts, in spite of
18 your obligations under the Master Settlement Agreement,
19 are very upbeat about the financial future of Philip
20 Morris; isn't that true?

21 A. Well, I don't think the stock reflects that.
22 If you're talking about Philip Morris Companies, the
23 stock is at a very low point, actually. I think the
24 analysts who evaluate the company evaluate most of the
25 company's businesses in a positive light. But then

1 they go on to say, when they look at our business, that
2 the business is performing reasonably well under the
3 circumstances in which it exists.

4 But it is at high risk due to the amount of
5 litigation that's filed against us. And I think that's
6 how they judge it. I think they recommend the stock is
7 a buy, but high risk.

8 Q. Mr. Szymanczyk, if you got your wish, and
9 this jury returned a low verdict of punitive damages,
10 you know the stock would go through the ceiling,
11 because the stock is discounted in anticipation of what
12 this jury may do in this punitive damage phase of the
13 case; isn't that correct?

14 A. Well, the stock is discounted based on this
15 piece of litigation as well as over a thousand other
16 pieces of litigation that come behind it. So I don't
17 think that you can make a determination as to what the
18 stock will do relative to any verdict by this jury,
19 because there are cases coming immediately behind this
20 case.

21 In fact, there are aggregated or multiple
22 class cases coming immediately behind this case. So I
23 think that that's a very difficult assumption to make.

24 Q. Mr. Szymanczyk, I thought we established
25 yesterday, there are no aggregated cases coming behind

1 this case. There are only individual cases.

2 MR. WEBB: Your Honor --

3 THE WITNESS: That's not true.

4 BY MR. ROSENBLATT:

5 Q. Tell me about the aggregated class action
6 that's set for trial somewhere else.

7 A. Well, there are 91 multiple or aggregated
8 cases that are on the docket. I mean, in fact, I'm
9 scheduled to do a deposition in one next week. So I
10 would disagree with you.

11 If you're talking about an individual class
12 action, there are other individual class actions, as I
13 recall, coming behind this one.

14 Q. I want you to name for us one class action
15 similar to this class action, involving real people who
16 have been victimized by cigarettes, that has been
17 certified anywhere in the country, to go to trial.
18 Tell me --

19 A. I can't tell you what the state of that piece
20 of litigation is. I'm talking about litigation that's
21 filed.

22 Q. And I'm pinning you down, I'm trying to pin
23 you down on class actions. Because you're creating the
24 impression that there are other cases similar to this,
25 and I'm telling you there's no case similar to this.

1 A. I said "aggregated cases." There are
2 aggregated cases. I have one that's one coming up in
3 Federal Court that is a, a union recovery case, that's
4 an aggregated case.

5 The 91 cases that I'm talking about have a
6 total damage request that equal \$700 billion between
7 them. And so there are many of them.

8 They may not be identical to this case, but
9 there are many aggregated cases that are on the docket
10 right now.

11 Q. You're using the term "aggregated" to
12 deliberately confuse the issue, aren't you?

13 MR. WEBB: Objection.

14 A. No, not at all.

15 BY MR. ROSENBLATT:

16 Q. Because in the union case that you've just
17 referred to, that has nothing to do with putting money
18 in the pockets of individual victims; that has to do,
19 like the attorney general cases, in terms of
20 reimbursing the union for money that the union has laid
21 out to pay medical expenses for the victims. It's that
22 kind of aggregation, isn't it?

23 A. My comment was relative to --

24 Q. Isn't it?

25 A. Liability that the company faces. That was

1 what my comment was relative to. And I think I am
2 factually correct in what I have said.

3 Q. There is no other class action involving
4 individual victims of your product that has ever gone
5 to trial, in the history of tobacco litigation; isn't
6 that true?

7 MR. WEBB: Asked and --

8 BY MR. ROSENBLATT:

9 Q. As of today?

10 MR. WEBB: Asked and answered twice
11 yesterday. Twice yesterday.

12 THE COURT: Well, he didn't quite answer that
13 question.

14 MR. WEBB: He answered it twice, yesterday,
15 Your Honor.

16 THE COURT: I don't know about that.

17 Can you answer that with a yes or no?

18 THE WITNESS: Say the question again.

19 (The record was read by the reporter.)

20 THE WITNESS: I think that's true.

21 BY MR. ROSENBLATT:

22 Q. Just like you can talk about thousands of
23 cases out there. But you said yesterday that in the
24 history of Philip Morris, there have been eight
25 individual cases, a total of eight -- not thousands,

1 not hundreds -- eight, that actually went to jury
2 verdict, in the whole history of Philip Morris
3 litigation?

4 MR. WEBB: Asked and answered twice
5 yesterday, Your Honor.

6 THE COURT: That was yesterday, I agree.
7 Unless it's in preparation for another question.

8 MR. ROSENBLATT: No, that's all right, Judge.

9 BY MR. ROSENBLATT:

10 Q. Well, in spite of all the litigation
11 environment, you would agree that Mr. Bible is very
12 upbeat and believes that his companies will overcome
13 the litigation challenge, and he's been quoted as
14 saying that; isn't that correct?

15 MR. WEBB: Well, Your Honor, objection to
16 what Mr. Bible said.

17 Can we be heard on that?

18 THE COURT: I'll sustain.

19 MR. ROSENBLATT: Well, Your Honor. Let me
20 tell you where I'm coming from.

21 THE COURT: All right.

22 (The following proceedings were had at
23 sidebar:)

24 MR. ROSENBLATT: Bible chairs the stockholder
25 meetings. He's the one who's quoted in the Wall Street

1 Journal about tobacco. That's the only controversial
2 part of his business. He's made public statements:
3 We're going to overcome this. We're going to overcome
4 this litigation. Other companies have been faced with
5 litigation.

6 Mr. Szymanczyk doesn't make these public
7 statements.

8 MR. WEBB: Your Honor, my objection goes
9 to --

10 MR. ROSENBLATT: I want to ask him: Do you
11 agree with your boss?

12 MR. WEBB: Wait a minute. First let's
13 establish, Mr. Bible is the CEO and chairman of Philip
14 Morris Companies, Inc. So unless Mr. -- first of all,
15 that was only admissible if you're piercing the
16 corporate veil and using Mr. Bible's statements as
17 admissions against Philip Morris, Incorporated, which
18 clearly Mr. Rosenblatt has failed to do that.

19 So he just -- what Mr. Bible says cannot be
20 used as an admission of Philip Morris, Incorporated,
21 based on this record.

22 THE COURT: See where the dichotomy arises is
23 all these other lawsuits involve Philip Morris
24 Companies Inc.

25 MR. WEBB: No.

1 THE COURT: You're talking about all of these
2 thousands of lawsuits involving USA.

3 MR. WEBB: Yes, they involve USA, only the
4 tobacco company.

5 MR. ROSENBLATT: Oh, that's not -- you know,
6 Philip Morris Companies is sued in a lot of these
7 cases.

8 MR. WEBB: I can't speak for -- Philip Morris
9 Companies was named in this case and then dismissed.
10 Philip Morris Companies occasionally gets named and
11 then dismissed out. The tobacco business, they're
12 tobacco cases.

13 MR. ROSENBLATT: They're including in this
14 thousands of individual Broin cases, individual flight
15 attendants.

16 THE COURT: I understand. But what Mr. Bible
17 says, I think if he knows what the company's position
18 is, as to whether or not they're upbeat, as to whether
19 or not they want to win or lose, that's a different
20 story.

21 I suppose, if you can show a statement by the
22 company from Mr. Bible, if he disagrees, to show what
23 he says is not so, that may be another matter. But
24 right now I think we're going to make it generic as to
25 what he believes the company's policy is or feeling

1 regarding these lawsuits.

2 MR. ROSENBLATT: Without reference to Bible.

3 THE COURT: Yes, without reference to Bible.

4 MR. ROSENBLATT: I'm going to drop it,
5 because I want to say that he presides at stockholders
6 meetings.

7 THE COURT: If he ever -- says he's ever
8 heard Bible admit it.

9 MR. WEBB: He can't ask him what Bible said.

10 THE COURT: Who's told him that, and he says,
11 "I heard Bible say it," that's a different story. Or,
12 "Have you ever heard Bible say it?"

13 (The sidebar conference was concluded, and
14 the following proceedings were held in open court:)

15 BY MR. ROSENBLATT:

16 Q. Have you ever heard Mr. Bible, the CEO of
17 Philip Morris Companies, Inc., at a stockholders
18 meeting which he chairs, or in any other context, where
19 he has addressed the issue as to whether or not Philip
20 Morris stock is still a good buy in spite of the
21 litigation climate?

22 A. Well, I've been at the annual meeting. I
23 can't tell you that I can recall a specific reference
24 to what you're saying.

25 Do you have some specific thing that you're

1 referring to?

2 Q. I mean, isn't he upbeat about it? He's not
3 worried: It's a challenge, but we're going to overcome
4 it.

5 Isn't that basically the position of
6 Mr. Bible and the company, and your company?

7 MR. WEBB: Your Honor, I object to the
8 question.

9 THE COURT: Overruled.

10 BY MR. ROSENBLATT:

11 Q. That's the basic position --

12 A. Well --

13 Q. -- We'll take care of this?

14 Go ahead.

15 A. I think that his position is that the company
16 as a whole is performing reasonably well, and that we
17 face some substantial litigation hurdles. But that the
18 company is doing everything that it can to defend the
19 shareholders in that litigation. And that we would
20 hope, over time, that we would prevail in the various
21 pieces of litigation that we're involved in.

22 And I think that that's a fair representation
23 of what Mr. Bible communicates to people.

24 Q. I'm going to show you a research paper, a
25 very typical research paper, which came out a few days

1 ago, June 2nd, 2000, by a prominent tobacco analyst,
2 ask you to look it over.

3 My question is going to be: Are the
4 conclusions reached by this particular tobacco analyst
5 pretty typical of how financial analysts and tobacco
6 analysts view the purchase of tobacco stocks?

7 A. Okay, now, what's your question?

8 Q. Whether that report is fairly typical of the
9 reports and analyses of tobacco analysts and financial
10 analysts about the prospects for the tobacco business?

11 A. Yes. Some are like this, some are perhaps
12 less positive; but most of them, as I said, would say,
13 would recommend buy, high risk.

14 Q. And it's a great buy if someone figures that
15 the stocks are going to go up, depending upon what the
16 jury in this case may do; then they'd be buying cheap,
17 hoping that the stocks would go through the roof if the
18 jury does what you want them to do?

19 MR. WEBB: Objection as speculating what
20 other people on the market will do. Your Honor, I
21 object to the form of the question.

22 THE COURT: Unless he knows, because of his
23 contact with or his discussion with or his own
24 knowledge of the financial market.

25 BY MR. ROSENBLATT:

1 Q. Do you know or not?

2 A. I do not have the capability to predict what
3 happens in the stock market.

4 Q. I wasn't asking you to predict.

5 MR. WEBB: I object.

6 THE COURT: Let's go to sidebar.

7 (The following proceedings were had at
8 sidebar:)

9 THE COURT: He just made reference to it.

10 MR. WEBB: I didn't object to him showing it
11 to him.

12 THE COURT: Basically speaking, stock
13 analysts say it's a good stock to buy, but it's a high
14 risk stock.

15 Now, what's the issue?

16 MR. ROSENBLATT: I just wanted to show him
17 what he said is fairly typical. I want to show what
18 this particular --

19 THE COURT: Is this a different one?

20 MR. ROSENBLATT: It's the same one. But I
21 want to put it up on the Elmo. And I didn't discuss --
22 I never discussed with him or asked him what the
23 analysts actually said.

24 MR. WEBB: I didn't object. He did it the
25 right way. He essentially refreshed his memory as to

1 what the analysts say. I object to publishing this
2 document. It's not in evidence.

3 THE COURT: He wants to put it in evidence.

4 MR. WEBB: I'm objecting to it. I don't know
5 who Bernstein is, but we can call Bernstein in here and
6 I can cross examine him. This is clearly hearsay.

7 THE COURT: If he recognizes the fact that
8 it's accurate to the degree that he said.

9 MR. WEBB: It doesn't make the document
10 admissible.

11 THE COURT: Generally speaking, information
12 contained in here is accurate. Whole concept of
13 hearsay is to avoid inaccuracy.

14 MR. WEBB: I don't know what Mr. Bernstein
15 based this conclusion on. There's no foundation laid
16 for this document to come into evidence.

17 MR. ROSENBLATT: The foundation is it's
18 typical.

19 THE COURT: You've got to understand
20 something here. The purpose of hearsay is to keep out
21 of evidence that which is unreliable.

22 Now, if a person on the witness stand says,
23 "It's reliable, okay and I rely on it," so be it. Then
24 it really doesn't meet the test of hearsay, does it?

25 MR. WEBB: Judge, he's not an expert witness,

1 to lay a foundation for this. Mr. Szymanczyk is not
2 able to lay a foundation for a document from a company
3 called Bernstein Research.

4 THE COURT: Unless he agrees with it. If he
5 agrees with it and it guides his performance, then it's
6 fair game.

7 MR. WEBB: All he said was he doesn't
8 disagree that that is what analysts were saying.

9 THE COURT: That's all he's talking about.

10 MR. WEBB: He said business analysts --

11 THE COURT: He says: Is this what analysts
12 are saying? Yes, that's what analysts are saying.

13 It doesn't make a difference whether it's
14 right or wrong. It's a question of whether they're
15 saying it. It's not for the truth of the matter
16 asserted, but for the fact that it's asserted, then
17 it's not hearsay. If that's what it's for.

18 MR. ROSENBLATT: That's what it's for.

19 THE COURT: Overruled.

20 (The sidebar conference was concluded, and
21 the following proceedings were held in open court:)

22 BY MR. ROSENBLATT:

23 Q. What I've put up on the Elmo is something
24 called Bernstein Research Call, dated June 2nd, 2000.

25 Investors who buy and sell stocks obviously

1 study research done by people who specialize in a given
2 segment of the economy, correct?

3 A. Well, a tobacco analyst is supposed to be a
4 specialist who reviews a specific set of categories, so
5 that's what they would do. And then they write their
6 reports. As to whether or not people rely on their
7 reports in terms of making decisions I think is
8 somewhat speculative, because, obviously, as you've
9 pointed out, a lot of these tobacco analysts recommend
10 the stock. But that doesn't seem to have had any
11 impact on our stock price or purchases on the stock.

12 Q. Well, nearly all -- you read tobacco
13 analysts?

14 A. I do, yes.

15 Q. And you would agree that there's basic
16 unanimity among the tobacco analysts that the reason
17 why Philip Morris stock is low now, much lower than it
18 was before this trial began, is because the stock
19 market has already discounted what they expect the jury
20 to do in this case on punitive damages?

21 MR. WEBB: Your Honor, that's been asked and
22 answered twice before today.

23 THE COURT: It seems rather repetitious,
24 counsel.

25 MR. ROSENBLATT: It just seems that way.

1 BY MR. ROSENBLATT:

2 Q. "Our first glimpse of second quarter share
3 trends reveals excellent results for Philip Morris."

4 That's the same exact thing that Mr. Bible
5 told the most recent stockholders meeting, isn't it:
6 Things are looking good for Philip Morris in the
7 tobacco business?

8 A. That's talking about Philip Morris Companies,
9 because they're talking about Philip Morris Companies
10 stock.

11 Q. Yes, but the only thing Bernstein is talking
12 about is tobacco, he's not talking about Kraft Foods or
13 Miller beer. He's a tobacco analyst, not a beer
14 analyst?

15 A. What he's saying there is he's talking about
16 share results, so he's talking about share of the
17 market. He's talking about that specific item, and he
18 says: The share results for Philip Morris in terms of
19 increased share growth in the market will be good.

20 Q. And then we go down to the Investment
21 Conclusion, talking about the tobacco industry, and
22 what I have yellowed, this tobacco analyst Bernstein
23 says: Overall, industry fundamentals remain solid,
24 with Philip Morris the clear leader."

25 And that's the -- pretty much the consensus

1 among other tobacco analysts, as well, isn't it?

2 A. I think that's probably right, that the
3 fundamentals in the industry are pretty stable right
4 now. And that Philip Morris, from a share growth point
5 of view, is the leader, that's correct.

6 Q. As a matter of fact, that was a tremendous
7 motivating factor for Philip Morris and the other
8 companies to enter into the Master Settlement
9 Agreement, to in effect buy stability, because you got
10 rid of 50 states that can never sue you for anything
11 anymore.

12 So that's made -- the Master Settlement
13 Agreement has made the tobacco industry very stable,
14 not 100 percent stable, but stable?

15 A. Well, I wouldn't agree with that.

16 Q. You wouldn't?

17 A. No. I think pricing isn't stable today. And
18 that remains a primary issue to the industry going
19 forward.

20 MR. ROSENBLATT: I'm going to offer this in
21 evidence.

22 THE CLERK: Number 60.

23 MS. LUTHER: Your Honor, before that document
24 is admitted into evidence, could the rest of the
25 defendants have an opportunity to see what's in it and

1 possibly request that portions of the document be
2 redacted? My understanding of what was discussed at
3 sidebar was it was only as to PM.

4 THE COURT: Go ahead. They can look at it.

5 MS. LUTHER: Thank you.

6 THE COURT: Meanwhile, proceed. Mark it for
7 I.D. and proceed.

8 BY MR. ROSENBLATT:

9 Q. Now, one of the main features of the Accord
10 cigarette is that it eliminates or significantly
11 reduces secondhand smoke?

12 A. Well, it doesn't burn unless somebody is
13 puffing on it, if that's what you mean.

14 Q. Right, unlike the conventional cigarette
15 where if it's lit, you put it in an ashtray, you'll
16 still get the sidestream smoke?

17 A. Yes, you would, that's true.

18 Q. So one of the unique features of Accord is
19 that when the person is not taking, when the smoker is
20 not taking one of those eight puffs, it does not emit
21 any smoke?

22 A. That's true.

23 Q. And that's touted by the company as an
24 advantage?

25 A. I suppose, but it is a true statement.

1 Q. The Accord exhibit that you showed to the
2 jury earlier states that it's a new way to smoke,
3 because there is, quote, "less smoke around you." Do
4 you remember that?

5 A. That could be. I don't remember
6 specifically, but that would seem to make sense.

7 Q. Well, from the standpoint of Philip Morris, I
8 assume that you consider it a positive to eliminate
9 secondhand smoke?

10 A. I think the consumer considers it a positive,
11 yes.

12 Q. Now, you testified on direct examination that
13 Philip Morris in 1997 made a commitment to Congress
14 that there would be one voice to the public on the
15 subject of smoking and health. And that was going to
16 be the voice of the public health authorities, correct?

17 A. That is correct. On the subject of smoking
18 and health, that's correct.

19 Q. Well, you are aware that your company takes a
20 totally contrary position --

21 MR. WEBB: Your Honor, I need to object to
22 this on secondhand smoke. You already ruled on this.

23 THE COURT: I don't know if we're talking
24 about secondhand smoke. I think he jumped from one to
25 another, unless you haven't.

1 (The following proceedings were had at
2 sidebar:)

3 THE COURT: What are you talking about?

4 MR. ROSENBLATT: I was trying to lay a
5 predicate, because I knew --

6 THE COURT: For?

7 MR. ROSENBLATT: -- because I knew Your
8 Honor's feeling on the issue of secondhand smoke. But
9 he has clearly opened the door on a couple of
10 occasions.

11 First of all, they take the position that
12 they will never debate the public health authorities on
13 issues relating to smoking and health.

14 THE COURT: Okay.

15 MR. ROSENBLATT: Now, with respect to
16 secondhand smoke and the Accord, which they introduced,
17 has a feature that secondhand smoke is not emitted,
18 they take a totally contrary -- they do debate, they
19 take a totally --

20 THE COURT: What do they say?

21 MR. ROSENBLATT: They say: Remember in 1986
22 the Surgeon General came out with a report saying
23 secondhand smoke causes disease?

24 That's the position. Their position is it
25 doesn't.

1 THE COURT: Where do they say that?

2 MR. ROSENBLATT: On their Web site. He said
3 that in his deposition. He said that in his
4 deposition.

5 There's a totally contrary position between
6 Philip Morris on the one hand and public health
7 authorities on the other. And they do not say, with
8 respect to secondhand smoke: Listen to the public
9 health authorities.

10 THE COURT: I see.

11 MR. WEBB: Actually, what the truth is, first
12 of all, we need to make sure, this has already been
13 ruled upon once in this trial with Dr. Richmond.

14 THE COURT: It's a little different.

15 MR. WEBB: No. Same issue, on the Web site
16 Philip Morris has stated, with Congress, in 1997, they
17 will not debate the issue of disease causation and
18 addiction. He never touched upon ETS on direct exam,
19 never once hinted about that, never once has that been
20 opened by anything this witness said on direct
21 examination whatsoever.

22 Number two, what the witness has said in his
23 deposition with Mr. Rosenblatt is that there is not a
24 general consensus in the public health community as to
25 whether secondhand smoke -- there's a dispute in the

1 public health community that the science is totally
2 different on ETS than it is on direct inhalation in the
3 lungs.

4 The fact that Philip Morris and the public
5 health community, itself, that there's questions as to
6 whether there's enough evidence or not enough evidence,
7 that has nothing to do with this case.

8 In fact, Mr. Rosenblatt tried to do this with
9 Dr. Richmond, on the Web site. And tried to show him
10 the Web site. But that was an entirely different
11 issue.

12 Now we've got a direct conflict here, which
13 is what he's trying to raise, the conflict between the
14 statement that we will not dispute the medical
15 authorities.

16 Now we have what he intends to show, that
17 there is a conflict, and something that we disagree, or
18 it has not been shown about secondhand smoke.

19 MR. WEBB: But there's no conflict.

20 THE COURT: I don't care what he's testified
21 about conflict or not. What he's testified about is:
22 We're not going to dispute the public health
23 department.

24 If he's saying now, "except for secondhand
25 smoke," that's a different story. I don't know what

1 he's trying to show.

2 I haven't seen the Web site. I don't know
3 what the Web site says about secondhand smoke. I can
4 understand what counsel is trying to show, there's no
5 conflict when it comes to direct smoking, but you're
6 raising a conflict as to secondhand smoke.

7 If that be the case, I think he's entitled to
8 show that. Not about the pros and cons, but the fact
9 that there's a conflict.

10 MR. ROSENBLATT: That's exactly what I'm
11 talking about.

12 MR. REILLY: Judge, yesterday, or I forget
13 how long Mr. Szymanczyk has been on the stand, but on
14 direct examination, you sustained Mr. Rosenblatt's
15 objection to going into this 1997 communication of
16 Congress. You specifically told Mr. Webb that he
17 couldn't go into that because you thought that was more
18 Noerr-Pennington material, and you told us that we
19 couldn't talk about that --

20 THE COURT: That was a whole different ball
21 game.

22 MR. REILLY: No, it was exactly this issue.
23 Mr. Webb wanted to ask Mr. Szymanczyk why it was that
24 they had decided they were going to --

25 THE COURT: Why is it different? The

1 question is, what they did is another matter. We never
2 asked why. All we said at this point is -- he has even
3 said: We are not going to dispute it, that's a public
4 health issue, we accept that.

5 That's fine, and it's not Noerr-Pennington,
6 nothing to do with that.

7 MR. REILLY: But, Judge, what you ruled was
8 that there couldn't be any discussion or communication
9 with Congress. That was your specific --

10 THE COURT: Nobody has mentioned Congress.

11 MR. REILLY: Mr. Rosenblatt said, if you look
12 back at Mr. Rosenblatt's question, you'll see it's all
13 about communication with Congress.

14 THE COURT: I get so fed up, you take a
15 little tiny piece and try to make a whole mountain,
16 when it has nothing to do with the issue. The fact
17 that the word "Congress" was mentioned has nothing to
18 do with Noerr-Pennington.

19 MR. REILLY: This is your ruling.

20 THE COURT: It's an entirely different
21 concept, and you people make it what you want it to be.

22 In this particular case if there's a
23 difference between their position vis-a-vis giving
24 public health officials the final word vis-a-vis what
25 he says on this document was causation, disease and

1 causation, and it doesn't parse it down to causation,
2 only from direct smoking, it's disease and smoking or
3 causation and smoking, and that's what it's from. And
4 if secondhand smoke is part of smoking, so be it. If
5 they disagree with that, he's entitled to bring it up.

6 MR. WEBB: Judge, can we at least do a voir
7 dire? In other words, you're suggesting there's a
8 conflict, I don't know that there is a conflict. I
9 don't know how it's going to be resolved unless we do a
10 voir dire.

11 THE COURT: He's going to ask him what the
12 position is. If he says, "We disagree with them," then
13 it shows that there's a conflict.

14 MR. WEBB: Then we get the whole secondhand
15 smoke issue in this case.

16 THE COURT: I'm not going into secondhand
17 smoke. You're trying to make more of it than it is.

18 I'll let him ask the question. See where we
19 go.

20 (The sidebar conference was concluded, and
21 the following proceedings were held in open court:)

22 BY MR. ROSENBLATT:

23 Q. You know that the public health community,
24 since the Surgeon General's Report of 1986, on the
25 subject of secondhand smoke, has taken the position

1 that secondhand smoke causes disease, and Philip Morris
2 says that's not true; isn't that correct?

3 A. No, that's not correct.

4 Q. Tell me what's correct, tell me what's
5 incorrect about it.

6 A. My understanding is that there are a range of
7 different scientific studies that have been done.

8 There are some studies where the result has
9 been a conclusion that there is some association
10 between secondhand smoke and disease. And there are
11 other studies where that same association has not been
12 drawn.

13 There is a stronger association related to
14 some childhood disease or diseases. And I believe
15 there is a recommendation that you want to make sure
16 that you keep kids away from secondhand smoke.

17 I believe recently, in the United States, the
18 public health authorities have added secondhand smoke
19 in conjunction with some other items. Alcohol was one
20 of them. And listed them as human carcinogens, that's
21 a very recent occurrence. IARC has not yet drawn that
22 conclusion nor has the United Kingdom Public Health
23 Authority, to name a couple.

24 And in the context of us, we continue to pay
25 attention to that. In fact, we have had some

1 statements regarding secondhand smoke on our Web site.
2 And we're in the process of revising those statements
3 consistent with some of the recent information and
4 occurrences regarding secondhand smoke, so that they're
5 accurately reflecting what the public health
6 authorities currently say.

7 I would point out to you, though, that that
8 was not part of the Hatch Statement or that agreement
9 with Congress; but be that as it may, that is still
10 something that we're paying attention to.

11 Q. Philip Morris has taken the position that we
12 will not debate the public health authorities on issues
13 relating to smoking and health, correct?

14 A. Well, if you look at the Hatch Statement, I
15 think you'll see that secondhand smoke was specifically
16 referred to as a separate item.

17 Q. I'm not talking about any Hatch Statement,
18 I'm not talking about Congress. I'm simply asking you,
19 as a general statement, isn't it true that Philip
20 Morris has publicly taken the position that: We will
21 not debate the recognized public health authorities on
22 issues relating to smoking and health?

23 MR. WEBB: Your Honor, I object. He just
24 answered that question twice. I object.

25 THE COURT: Well, come on sidebar.

1 (The following proceedings were had at
2 sidebar:)

3 MR. WEBB: Your Honor, the reason --

4 THE COURT: I understand a lot more about
5 this issue than I did before, okay, because I haven't
6 studied this whole thing.

7 And you're talking now about the Hatch
8 Statement and an agreement with Congress and the
9 contents of that agreement, which nobody brought to my
10 attention in the first place, as far as what the
11 agreement truly said.

12 If he's saying that the agreement
13 specifically excludes secondhand smoke, that's news to
14 me.

15 MR. WEBB: It does.

16 THE COURT: Well, that's something I didn't
17 know about.

18 MR. WEBB: It completely excludes secondhand
19 smoke. He's now gotten into the whole issue of the
20 science of secondhand smoke.

21 THE COURT: I don't want to get into that.
22 He did it.

23 MR. WEBB: That was part of his question.

24 THE COURT: The point is we're getting too
25 far afield. Now we're getting into a field that I was

1 totally ignorant about the distinction between the two.
2 I thought it was part and parcel of the same thing that
3 they had agreed, that they would look to the public
4 health officials about who was going to be responsible
5 as a spokesperson for public health.

6 If there is an exception, which apparently
7 you're telling me there is, then I'll sustain the
8 objection.

9 MR. ROSENBLATT: I'm simply just trying to
10 get him to acknowledge that the public health community
11 says that secondhand smoke causes disease and Philip
12 Morris says it doesn't.

13 THE COURT: I understand what you're saying.
14 You didn't raise the Hatch Agreement, he did. I
15 understand that. And in response to your question.

16 I understand that there is a distinction here
17 to show, and what you're trying to show is that they
18 still haven't agreed about disease and secondhand
19 smoke.

20 Okay. That I understand.

21 Not really the issue that we had in this
22 case. The question is: Is veracity, reliability and
23 truth and honesty, and all of that, and I understand
24 that's where you want to go. But it opens up a whole
25 new can of worms here.

1 MR. WEBB: We have to litigate the whole
2 science on secondhand smoke.

3 THE COURT: I don't want to do that.

4 MR. WEBB: When he talks about the agreement,
5 he's talking about the Hatch Agreement. Then you said
6 I couldn't go into --

7 MR. ROSENBLATT: I'm not talking about the
8 agreement.

9 MR. WEBB: That is the agreement, the
10 agreement by Philip Morris.

11 THE COURT: He avoided mention of it. The
12 only time the agreement was mentioned was when the
13 witness talked about it.

14 MR. WEBB: But the reason the witness says
15 that is because what he talks about what Philip Morris
16 agreed to do, that's where it occurred in that
17 statement.

18 I can show Your Honor ETS is taken out of
19 that statement.

20 THE COURT: The only way you can get around
21 this is saying: Lay it all out. Truth is truth.

22 If you want to get into that, there was an
23 agreement between Congress and so forth, in the Hatch
24 Agreement. It isn't a Noerr-Pennington issue, when you
25 think about it, because Noerr-Pennington says you can't

1 hold somebody liable for something that they say during
2 your lobbying efforts. This is not lobbying efforts
3 for which they're being held liable. It really isn't
4 Noerr-Pennington. But I let it slide because I didn't
5 want to get into congressional things.

6 Here is where we're at. If there is an
7 agreement with Congress that they're going to let them
8 speak public health-wise about certain issues and not
9 other issues, why shouldn't the jury know that, and why
10 shouldn't they know that they disagree about the body
11 of science of secondhand?

12 If you let it lie there, then it opens up a
13 whole bunch of questions, then the whole science thing.

14 MR. ROSENBLATT: All I really want to show on
15 this issue is that their position on secondhand smoke
16 has not changed.

17 MR. WEBB: And that's the issue you
18 stopped --

19 MR. ROSENBLATT: They bring out the whole
20 change issue, that's the whole case. They build a
21 product, Accord, where one of the main features, and
22 one of the main attractions of this cigarette, that's
23 not going to go anywhere, is that it does not emit
24 secondhand smoke. He said that in response to --

25 THE COURT: I'm not so sure it's a main

1 feature.

2 MR. WEBB: He didn't even mention it on
3 direct examination. I intentionally left it out.

4 THE COURT: The fact that he didn't mention
5 it doesn't necessarily mean --

6 See what happens when you're in a vacuum.

7 Judge, I can bring the Hatch Statement after
8 lunch.

9 THE COURT: I'll agree with you, if that's
10 what it says, that's fine. The question is: How far
11 can we go on this? I understand he only wants to use
12 it for a limited purpose, to show they haven't changed
13 their position regarding all smoking issues.

14 MR. WEBB: That's the issue you said we could
15 not do earlier.

16 THE COURT: I didn't realize this is where we
17 were going with it. It may not be right for one
18 factor, but it could be right for another factor. The
19 fact I didn't want to get into a discussion of
20 secondhand smoke.

21 MR. ROSENBLATT: On the merits.

22 THE COURT: This is not on the merits. Let's
23 take a lunch break.

24 (The sidebar conference was concluded, and
25 the following proceedings were held in open court:)

1 THE COURT: All right, let's take our lunch
2 break at this point, folks. Come back at 1:30.

3 Usual rules apply.

4 (The jurors exited the courtroom.)

5 THE COURT: We'll be in recess until 1:30.

6 (Court was adjourned at 12:10 a.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Taylor, Jonovic & White
25 S.E. Second Avenue, Suite 250
Miami, Florida 33131 (305) 358-9047